IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A No. 80 of 2007

DATE OF ORDER: 26.7.2007

Commissioner of Income-tax, Hisar

... Appellant

Versus

Parshu Ram, Labour Contractor, Rani, Distt. Sirsa.

...Respondent

CORAM : HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

.*.*.*.

Present: Mr. Yogesh Putney, Advocate for the appellant-Revenue.

JUDGEMENT

M.M. KUMAR,J

The Revenue has approached this Court by filing the instant appeal under Section 260-A of the Income Tax Act 1961(for brevity "the Act"), by challenging order dated 30.6.2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B" Chandigarh (for brevity "the Tribunal) in ITA No. 645/chandi/2004, in respect to the assessment year 2000-2001.

The Revenue has claimed that the following substantial question of law would arise for determination of this Court.

> " On the facts & circumstances of the case, whether the ITAT was right in directing to apply net profit rate of 6.5% arbitrarily brushing-aside the fact that it was established by the AO with valid documentary evidence that the assessee claimed bogus expenses, which are more than that of the addition sustained by the ITAT, which works out by applying profit rate of 6.5%?"

Facts in brief are that the Assessee was a labour contractor and was engaged in lifting of food grains from Mandi to various Godowns of different Government Agencies. During the accounting period, the gross proceeds were at Rs. 88,91,995/-. The assessee claimed expenses of Rs. 84,98,277/- on account of labour and Cartage etc. The net profit including salary and interest paid to the partners had been shown at Rs. 2,39,550/- giving net profit rate of 2.69%. On the basis of the net profit shown in the preceding year 1998-99 at 4.88% and 1999-2000 at 9.18% on the gross payment, the Assessing Officer asked the Assessee to disclose reasons for low net profit rate. The assessee submitted that in the year 1998-99, the total permissible weight of the wheat bag was of 95 Kgs and in the year 1999-2000 it is only 50Kgs. He further pointed out that the rate of the labour per bag has not been reduced in the same proportion whereas there is wide gap in the rates of payment made by the department on 95 Kgs & 50 Kgs of wheat bag. The assessee furnished all the further details. The Assessing Officer found that 1,83,718 number of bags were those on which bogus expenditure was claimed and accordingly he disallowed transportation charges at the rate of Rs. 3/- per bag which amounted to Rs. 5,84,778/-. The Assessing Officer also simultaneously disallowed the expenses for loading and stacking amounting to Rs. 6,79,756/- at the rate of Rs. 3.70 per bag. He, therefore, disallowed the expenses amounting to Rs. 23,04,020/-, Rs.6,79,756/- and Rs. 5,84,778/-. He also made an addition of Rs. 5000/- out of travelling and miscellaneous expenses because those expenses were not fully vouched.

On appeal filed by the Assessee to the Commissioner of Income Tax (Appeals), the addition of Rs. 5,84,776/- was held to be justified as it was bogus in respect of another disallowance. The CIT(A) held that the Assessing Officer had assessed the income at Rs. 36,42,360/- against the gross transportation receipts of Rs. 88,91,995/- i.e. 41%, which was excessive. He further observed that the Assessing Officer had applied net profit rate of 6% in the immediate succeeding assessment years in assessee own case. He expressed the opinion that proper net profit rate was to be applied as against the specified disallowance made by the Assessing Officer by taking into account the disallowance under Section 40(b) of the Act out

of the interest and remuneration paid to the partners and bogus expenditure and further appropriate disallowance of Rs. 2,00,000/-, the CIT(A) directed the Assessing Officer to apply net profit rate of 10% subject to payment of interest and allowable salary of the partner in respect of returned income of the assessee at Rs. 68,810/-. He further directed the Assessing Officer to make the assessment at Rs. 6,78,240/-.

The Assessee as well as the Revenue challenged the order of the CIT(A) before the Tribunal. The Tribunal by taking into account the net profit rate applied by the Assessing Officer himself in succeeding years held that net profit rate of 6.5% on the gross receipt should be applied subject to allowance of admissible salaries to the partners and interest paid to them in accordance with the partnership deed. In the order passed by the Tribunal, para 11.2 reads as under:

> "In our opinion, when Net Profit rate is applied, no disallowance is called for out of the expenses. Now the question arises, whether in the facts of the present case, Net Profit rate should be applied or the expenses claimed by the assessee should be considered out of receipt shown by the assessee. In the instant case, it is not in dispute that the details supplied by the assessee were not subject to verification and most of the expenses claimed were unvouched and un-verifiable. However, nobody had disputed the receipts shown by the assessee at Rs.88,91,995/-. Considering the totality of the facts, we are of the opinion that in such type of case, net profit should be applied. In the instant case Ld CIT (A) had applied Net Profit rate of 10% but he had not given any basis while applying such rate. It is noticed that the Assessing Officer himself, for the succeeding year, had applied Net rate of 6% on the contract receipts of Rs.1,55,85,284/- shown by the assessee which is evident from the assessment order dated 30.1.2004 of the succeeding year. (copy of the said order is available on record). It is noticed that the turn over for the year

under consideration is much less than the turn over of the succeeding year because for the year under consideration gross receipts of the assessee were at Rs.8891995/- while the gross receipt for the succeeding year were at Rs.1,55,85,284/-. In our opinion, net profit for the year under consideration should have been more than the Net Profit rate for the succeeding year because in most of the cases with increase in turn over, there is slight decreased in the Net Profit rate. We, therefore, to meet the end of justice are of the opinion that the Net Profit rate of 6.5% will be reasonable for the year under consideration. We, therefore, direct the Assessing Officer to apply Net Profit rate of 6.5% to the gross receipts of Rs.88,91,995/- should by the assessee and accepted by the department subject to allowance of addmissible salary to the partners and interest paid to the partners in accordance with partnership deed. Accordingly the order of ld. CIT (A) is modified.

11.3 In view of the aforesaid discussion and considering the totality of the facts, we do not see any merit in the department appeal.

After hearing the learned counsel, we are of the considered view that the no substantial question of law warranting admission of the appeal within the meaning of Section 260(A)(1) and (3) of the Act would arise. The Tribunal after taking into account various factors especially, the order of the Assessing Officer in respect of the assessee himself for the succeeding years where net profit rate of 6% was applied, has taken the view that the net profit rate at 6.5.% subject to other factors would be just and proper. These questions necessarily are the questions of facts, which obviously reposed on numerous factors, therefore, we find that there is no arbitrariness in working out the net profit rate especially when the assessee's claim with respect to bogus expenses, has been rejected, which amounted to Rs. 5,84,776/-.

Therefore, we find that no substantial question of law would emerge warranting admission of the appeal. In view of the above the appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

July 26, 2007
rajeev

(AJAY KUMAR MITTAL)
JUDGE